95 N. W. Rep. 1078, where the Michigan cases are reviewed at length. And even though the period of removal be limited, and it be provided that the timber not removed during such period shall belong to the grantor, this will not prevent the title vesting in the grantee, according to the preceding authorities. While the principal case holds that ties manufacured by the plaintiff prior to the termination of the contract period, but left upon defendant's land, would not be lost to the plaintiff under the forfeiture clause, yet one court allowed the grantee a reasonable time after such period in which to remove the ties without incurring liability as a trespasser. *Hubbard et al.* v. *Burton,* 75 Mo. 65.

EQUITY—POSSESSION OF PERSONAL PROPERTY.—Complainant owned a number of logs in a boom formerly held by it under a lease. Defendant, in possession of the boom as a subsequent lessee, refused to allow the logs to be removed. In a suit to enjoin further interference with the removal, *Held,* that injunction would not issue. *Yellow Pine Export Co.* v. *Sutherland-Innes Co.* (1904). — Ala. —, 37 So. Rep. 922.

In most instances of wrongful detention of a chattel the owner has an adequate remedy in trover or replevin, and for this reason cannot go into equity. POMEROY'S EQ. JUR., Sec. 177; *His Imperial Majesty, etc.,* v. *Providence Tool Co.,* 23 Fed. Rep. 572; *Durant* v. *Einstein,* 35 How. Pr. 223, 248; *Mackey* v. *Michelstetter,* 77 Wis. 210, 45 N. W. Rep. 1087. However, the mere fact that the subject matter of the controversy is a chattel is not controlling. The real test is the adequacy of the legal remedy. For this reason equity will decree the delivery of a negotiable instrument on the ground that possession might not be obtained by replevin and that insolvency of the debtor could be shown in mitigation of damages. *Scarborough* v. *Scotter,* 69 Md. 137, 139, 14 Atl. Rep. 704; *Gibbens* v. *Peeler,* 25 Mass. 254; *Binseil* v. *Cashion,* 60 N. J. Eq. 116, 47 Atl. Rep. 456. So also the jurisdiction of equity embraces suits where the chattel is of peculiar value to the complainant, *McRea* v. *Walker,* 5 Miss. 455; or where the facts are too complicated to be properly considered by a jury, *Mo. Broom Mfg. Co.* v. *Guymon,* 115 Fed. Rep. 112; or where damages cannot be ascertained by reference to a market. *Paxton* v. *Danforth's Admr.,* 1 Wash. 120, 23 Pac. Rep. 805; or where the remedy at law is doubtful and uncertain. *American Ins. Co.* v. *Fisk,* 1 Paige 90. But it is not enough to show merely that title depends upon the construction of a will. *Hale* v. *Clarkson,* 23 Gratt. 42. The exercise of this jurisdiction is largely discretionary, and the present case shows to what extent practitioners will sometimes go in attempting to avail themselves of the advantages attaching to the processes of a court of equity. The complainant contended that removal could be accomplished more easily by it under protection of the court than by officers of the law, but the refusal of an injunction was unquestionably proper. *Jones* v. *McKenzie,* 122 Fed. Rep. 390; *Barkey* v. *Johnson,* 90 Minn. 33, 95 N. W. Rep. 583; *Keystone Electric Light, etc., Co.* v. *People's Electric Light, etc., Co.,* 200 Pa. St. 366, 49 Atl. Rep. 951.

EVIDENCE—HYPOTHETICAL QUESTION.—In an action for damages for personal injuries, a physician called by plaintiff testified that he examined the plaintiff two weeks after the accident and that he found an "old scar" just

outside the outer angle of the right eye. The witness was then requested to assume "that Mr. Fitzpatrick was thrown from a car August 22, 1904, sustaining a bruise over the right eye that inflicted a scar that you found there on September 8, 1904," and later "to assume that he (plaintiff) did have concussion of the brain at that time." Both questions were objected to by defendant, but were nevertheless admitted, and defendant excepted. *Held*, error. A hypothetical question cannot be based upon what could not have been a fact, nor upon facts of which no evidence has gone to the jury. *Fitzpatrick v. N. Y. City Ry. Co.* (1905), — N. Y. —, 92 N. Y. Supp. 248.

Testimony in the shape of inferences, or conclusions, rests always on certain premises of fact. These premises may be furnished to the witness either by personal observation on his part, or by the submission to him by counsel of a definite statement of facts upon which his opinion is desired. Such a statement of facts is called a hypothetical question, the fundamental purpose of which is to furnish "the tribunal with the means of knowing just what premises the conclusion is based upon, and requires that the data to serve as premises shall be particularized with sufficient distinctness." It follows therefore that the premises and conclusion may be furnished by different persons; and that the witness need not have personally observed the circumstances upon which his opinion is based. However, if personal observation is had hypothetical presentation is unnecessary. *McDonald* v. *McDonald*, 142 Ind. 55; *Flanagan* v. *State*, 106 Ga. 109. As aptly stated by Mr. Wigmore, "The key to the situation, in short, is that there may be two distinct subjects of testimony,—premises, and inferences, or conclusions. The latter necessarily involves consideration of the former." WIGMORE, EVIDENCE, § 672 et seq; *Miller* v. *Smith*, 112 Mass. 475. This form of question is, however, permissible only in the examination of skilled witnesses, and this is so because of the operation of the opinion rule, which excludes the expression of opinions of persons of only ordinary skill for the reason that the jury is presumed as capable as the witness to form its own conclusion from the facts stated. *Ragland* v. *State*, 125 Ala. 12, 27; *Dunham's Appeal*, 27 Conn. 193. Although the courts are agreed that there must be "some" evidence upon which to base the question (*Lindenthal* v. *Hatch*, 61 N. J. L. 29; *Denver & R. G. Ry. Co.* v. *Roller*, 100 Fed. Rep. 738; *Roark* v. *Greeno*, 61 Kan. 299; *Cole* v. *Fall Brook Coal Co.*, 159 N. Y. 59, 68; *Burnett* v. *Ry. Co.*, 120 N. C. 517; *Nichols* v. *Oregon Short Line R. R. Co.*, 25 Utah 240), there is no uniformity of decision as to the amount of evidence upon which such questions may be based, and various standards are indicated in the books, a few of which will be noted: Facts proved, *Rafferty* v. *Nawn*, 182 Mass. 503; *Birmingham Ry. & El. Co.* v. *Butler*, 135 Ala. 388, 395; *Thomas* v. *Dabblemont, Admx.*, 31 Ind. App. 146; *Kirsher* v. *Kirsher*, 120 Ia. 337; tending to prove, *Howard* v. *People*, 185 Ill. 552; *Pierson* v. *C. G. W. Ry. Co.*, 116 Ia. 601; *State* v. *Peel*, 23 Mont. 358; *People* v. *Foglesong*, 116 Mich. 556; THOMPSON, TRIALS, § 604 et seq; within possible or probable range of the evidence, *Jackson* v. *Burnham*, 20 Colo. 532; *Conway* v. *State*, 118 Ind. 482; such only as counsel claim the evidence tends to justify, *Barber's Appeal*, 63 Conn. 393, 409; *Anderson* v. *Albertstamm*, 176 Mass. 87. It is not necessary that counsel use all the facts in evidence, but he may use such as he deems

necessary for the question. *Woodward* v. *C. M. & St. P. Ry. Co.*, 122 Fed. Rep. 66; *Chicago & Eastern Ill. Ry. Co.* v. *Wallace*, 104 Ill. App. 55; *Herpolsheimer* v. *Funke* (1901), — Neb. —, 95 N. W. Rep. 688; ROGERS, EXPERT TESTIMONY, § 27. But it has been held that the evidence must cover all the material points. *Nichols* v. *Oregon Short Line R. R. Co.*, supra; *Schaidler* v. *C. & N. W. Ry. Co.*, 102 Wis. 564. If the question is otherwise proper, it cannot be open to objection on account of its length (*Mayo* v. *Wright*, 63 Mich. 32, 43), yet "this subject, like the extent to which the examination of a witness may be allowed, must, in a great degree, be left to the discretion of the court." *Forsyth* v. *Doolittle*, 120 U. S. 73. It is generally held improper to base a question "upon all the evidence in the case." *People* v. *McElvaine*, 121 N. Y. 250; *Porter* v. *State*, 135 Ala. 51; *Aultman Co.* v. *Ferguson*, 8 S. D. 458. But this is permissible if the testimony is not conflicting. *Pyle* v. *Pyle*, 158 Ill. 289; *Oliver* v. *North End Street Ry. Co.*, 170 Mass. 222; *Gates* v. *Fleischer*, 67 Wis. 508. In the principal case the court said, "It seems to be evident that any scar which justified the description of 'old' on September 8 could not have been the result of an accident on August 22." As to the second objection, the court found there was "not the slightest evidence of concussion of the brain." The admission of the evidence was prejudicial error, and was properly overruled.

EXECUTION—EXEMPTIONS—LIFE INSURANCE.—At the time of his death, J. F. Jenkins was the holder and owner of three paid up life insurance policies, one of which was payable to the estate of the deceased. The estate was probated and the insurance policy constituted the whole estate which was set apart for the surviving widow. Plaintiff, a creditor of the deceased and also of the surviving widow, brings this action to collect his claim out of the above policy. *Held*, that money received from life insurance being exempt from execution (§ 690 Code), the proceeds of a policy payable to the estate of the insured may be set apart for the benefit of the surviving widow under § 1465, without first paying decedent's debts, and when so set apart is exempt as to her debts. *Holmes* v. *Marshall et al.* (1905), — Cal. —, 79 Pac. Rep. 534.

Doubtless there are provisions in the majority of the states allowing certain exemptions of the proceeds of life insurance policies from execution. The Code provisions of California present one of the most extreme, exempting all moneys from any life insurance if the annual premium does not exceed five hundred dollars. The justice of the exemption cannot be questioned when the beneficiary named is the widow or one dependent upon the deceased, but when one makes a policy payable to his estate it is difficult to understand why this money should not go to the administrator or executor and be disposed of like any other part of the estate. *Ionia Co. Sav. Bank* v. *McLean*, 84 Mich. 625. The court based its interpretation of § 1465, which is in regard to homestead exemptions on *Keyes* v. *Cyrus*, 100 Cal. 324, 34 Pac. 722, a case on the same subject. The money received by the widow was deposited by her in the bank, and it has been held even though policies taken out by the husband in favor of the wife are not subject to her debts (*Leonard* v. *Clinton*, 26 Hun. 288), yet it is so liable when the money is deposited in the bank in her name. *Crosby* v. *Stephens*, 32 Hun. 478.